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was ignorant of this illness and out of the jurisdiction on business when the judgment by default was given, and that he did not learn of it in time to open the default. *Held*, that the petition is not demurrable. *Howell v. Ware & Harper*, 66 S. E. 884 (Ga., Sup. Ct.).

Equity will not enjoin the enforcement of a judgment, unless there is a defense not available at law, or unless the judgment was obtained by fraud, surprise, or accident. See *Kersey v. Rash*, 3 Del. Ch. 321. Absence of counsel, making unavailable a meritorious defense, is, however, a recognized ground for equitable jurisdiction. *MacCall v. Looney*, 96 N. W. 238 (Neb.). But the client must have been free from negligence. *Shields v. McClung*, 6 W. Va. 79. So if other competent counsel might have been employed, equity will not intervene. *Crim v. Handley*, 94 U. S. 652. Moreover, any laches of counsel is chargeable to the client. *Jones v. Leech*, 46 Ia. 186. *Contra*, *Gideon v. Dwyer*, 17 N. Y. Misc. 233. Hence if the defense had not been made ready for presentation, or if the absence was due to negligence or if there was another, though inferior, attorney of record in the case, equity refuses to give relief. *Mock v. Cundiff*, 6 Port. (Ala.) 24; *Belloq & Ostheimer v. Allen*, 2 McGloin (La.) 66; *Powell v. Stewart*, 17 Ala. 719. Mistake, however, may be a cause for equity to interfere. *Weed v. Hunt*, 76 Vt. 212. And sudden illness is clearly a sufficient excuse for failure to appear. *Hiller & Co. v. Cotton & Co.*, 48 Miss. 593. Since the accident in the principal case was unaccompanied by any fault on the part of counsel or client, there is a proper basis for equitable jurisdiction. See 22 HARV. L. REV. 600.

JUDGMENTS — EQUITABLE RELIEF — FALSE RETURN OF SERVICE IN MECHANICS' LIEN PROCEEDINGS. — Judgment was rendered by default in an action to foreclose a mechanic's lien, and the property sold to A, the lienholder. Although the constable's return showed that process had been duly served on B, the owner, B brought a bill in equity against A to compel a reconveyance, alleging that he had not been served with notice of the proceedings, and that A had no rightful claim. *Held*, that A must open his common-law judgment and permit B to defend. *Mierke v. Sebecke*, 74 Atl. 977 (N. J., Ct. Ch.).

Equity will relieve against a judgment at law obtained without due service of process, if it appears that a good defense would have been available. See *Crafts v. Dexter*, 8 Ala. 767; *Jeffery v. Fitch*, 46 Conn. 601. The better rule, followed in most jurisdictions, is that the officer's return is not conclusive of due service, but may be rebutted even in the absence of fraud on the part of the former plaintiff. *Owens v. Ranstead*, 22 Ill. 161; *Ridgeway v. Bank of Tennessee*, 11 Humph. (Tenn.) 523. *Contra*, *Taylor v. Lewis*, 2 J. J. Marsh. (Ky.) 400. There is no reason against applying the same rule to a judgment in a mechanics' lien proceeding. Such a judgment is frequently said to be *in rem*. See *Porter & Co. v. Miles*, 67 Ala. 130, 133. In one sense, this is true, since the judgment is directed against the property and declares the existence of a lien thereon. But it is not binding upon the whole world. *McKim v. Mason*, 3 Md. Ch. 186. If the owner of the land is not made a party and served with process, his rights are not concluded by the judgment. *McCoy v. Quick*, 30 Wis. 521, 527; *Burnham v. Raymond*, 64 N. Y. App. Div. 596; *White v. Chaffin*, 32 Ark. 59. The New Jersey statute requires mortgagees also to be joined. GEN. STAT. N. J., TIT. MECHANICS' LIEN, § 34. Cf. *Fleming v. Prudential Insurance Co. of America*, 19 Colo. App. 126. Even if the judgment were strictly *in rem*, constructive notice to the world by publication would have been necessary. *McKim v. Mason*, *supra*; *Martin v. Darling*, 78 Me. 78; *Woodruff v. Taylor*, 20 Vt. 65, 76.

LEGACIES AND DEVISES — PARTICULAR INSTANCES OF CONSTRUCTION — ABSOLUTE GIFT FOLLOWED BY QUALIFYING CLAUSES. — A testator left his residuary property on trust for all his children who should be living at his death and reach twenty-one years, as tenants in common. There was a later proviso that

the shares of married daughters were to be held on the trusts of the settlements made by the testator upon their marriages. In the marriage settlement of A, a daughter who had reached twenty-one, the ultimate trust in default of her issue was to the testator. On A's death without issue, the residuary legatee under the testator's will claimed A's share under the will as being undisposed of. *Held*, that as the gift to A was absolute, her personal representatives are entitled on the failure of the trust to the testator. *In re Currie's Settlement*, 45 L. J. 53 (Eng., Ch. D., Jan. 14, 1910).

When an absolute legacy has subsequent limitations engrafted upon it, on the failure of such qualifications the absolute gift prevails. *Hancock v. Watson*, [1902] A. C. 14; *Sears v. Putnam*, 102 Mass. 5. But when the first gift is not absolute, a failure of any modifying clause throws that part of the legacy into the residue as undisposed of. *Lassence v. Tierney*, 1 Macn. & G. 551; *Re Richards*, 50 L. T. R. N. S. 22. In England, the cause of failure is immaterial — whether through remoteness, lapse, or the non-happening of an event. *Hancock v. Watson*, *supra*; *Mayer v. Townsend*, 3 Beav. 443. In this country, however, the rule seems confined to provisions void for perpetuity. *Graham v. Whitridge*, 99 Md. 248, 277; *Sears v. Putnam*, *supra*. Though the restrictions are usually in the same instrument, the rule is also followed when an absolute gift in a will is qualified by a subsequent codicil. *Norman v. Kynaston*, 3 De G., F. & J. 29; *The Security Co. v. Snow*, 70 Conn. 288. And the same principle is applied in the execution of powers where an absolute appointment is followed by limitations in excess of the power or void for perpetuity. *Churchill v. Churchill*, L. R. 5 Eq. 44; *Cooke v. Cooke*, 38 Ch. D. 202. The only difficulty is raised by the question of construction whether or not the first gift is absolute. If the words used are ambiguous, the testator's intent is to be gathered from the whole will; but once an absolute gift is spelled out, it remains unaffected by later expressions. *Lassence v. Tierney*, *supra*; *Hancock v. Watson*, *supra*.

LIBEL AND SLANDER — PLEADING AND PROOF — LIBEL WITHOUT INTENT. — A newspaper published an imaginary account of a supposedly fictitious character. The name used was that of the plaintiff, a prominent barrister of the locality, whose friends reasonably believed that he was the person referred to. The defendant did not intend to refer to the plaintiff, and had no intention of libelling any one. The plaintiff brought action for libel. *Held*, that he can recover. *Jones v. Hutton & Co.*, [1910] 1 A. C. 20. This case affirms the decision of the lower court commented on in 23 HARV. L. REV. 218.

MUNICIPAL CORPORATIONS — POLICE POWER AND REGULATIONS — ACTS PROHIBITED BY BOTH STATUTE AND ORDINANCE. — By its charter a city was given authority to make ordinances in the exercise of the police power. An ordinance was passed penalizing the sale or possession of cocaine. A state law, already in existence, imposed a smaller penalty for the sale of cocaine. *Held*, that there can be a conviction under the ordinance for the sale of cocaine. *Rossberg v. State*, 74 Atl. 581 (Md.).

When given authority by the legislature, a municipality can enact ordinances in the exercise of the police power. *Shafer v. Mumma*, 17 Md. 331. But regulations inconsistent with the general law of the state are void. *Hofmayer v. City of Blakely*, 116 Ga. 777. In applying this doctrine, text-writers, as well as courts, have adopted diverse rules. See MCQUILLIN, MUN. ORD., 783 *et seq.*; DILLON, MUN. CORP., 4 ed., 436; BEACH, PUB. CORP., 516 *et seq.* The view has been taken that an ordinance prohibiting an act criminal by statute or common law, is repugnant to the general law of the state, on the ground that it subjects an offender to double jeopardy or else deprives the state of jurisdiction. See *City of New York v. Alhambra Theater*, 118 N. Y. Supp. 471; *Southport v. Ogden*, 23 Conn. 128. Some states reject ordinances imposing a penalty or covering a scope